

**PT 01-50**  
**Tax Type:**      **Property Tax**  
**Issue:**        **Religious Ownership/Use**

**STATE OF ILLINOIS**  
**DEPARTMENT OF REVENUE**  
**OFFICE OF ADMINISTRATIVE HEARINGS**  
**SPRINGFIELD, ILLINOIS**

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<b>FIRST CHURCH OF THE NAZARENE</b>	)		
<b>OF OLNEY</b>	)		
<b>Applicant</b>	)	<b>A.H. Docket #</b>	<b>00-PT-0013</b>
	)	<b>Docket #</b>	<b>99-80-04</b>
<b>v.</b>	)		
	)	<b>Parcel Index #</b>	<b>06-34-150-040</b>
	)		
<b>THE DEPARTMENT OF REVENUE</b>	)	<b>Barbara S. Rowe</b>	
<b>OF THE STATE OF ILLINOIS</b>	)	<b>Administrative Law Judge</b>	

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**RECOMMENDATION FOR DISPOSITION**

**Synopsis:**

The hearing in this matter was held at the Illinois State Office Complex, 1100 Eastport Plaza Drive, Collinsville, Illinois, on November 3, 2000, to determine whether or not Richland County Parcel Index No. 06-34-150-040 qualified for exemption during the 1999-assessment year.

Bobby J. Humphrey, Pastor of the Church of the Nazarene (hereinafter referred to as the "Applicant") was present and testified on behalf of the applicant.

The issues in this matter include, first, whether the applicant was the owner of the parcel during the 1999-assessment year; secondly, whether the applicant is a religious organization; and lastly, whether the parcel was used by the applicant for exempt purposes during the 1999-assessment year. After a thorough review of the facts and law presented, it is my recommendation that the requested exemption be denied. In support thereof, I make the following findings and conclusions in accordance with the requirements of Section 100/10-50 of the Administrative Procedure Act (5 ILCS 100/10-50).

**Findings of Fact:**

1. The jurisdiction and position of the Department that Richland County Parcel Index No. 06-34-150-040 did not qualify for a property tax exemption for the 1999-assessment year was established by the admission into evidence of Dept. Ex. No. 1. (Tr. p. 5)

2. On January 3, 2000, the Department received the religious application that had been filed by the applicant with the Richland County Board of Review. The property description and use portion of the application stated that the land was to be used as a building site for the applicant's new church. The subject parcel consists of 11.25 acres and is vacant land. (Dept. Ex. No. 1)

3. On March 9, 2000, the Department denied the requested exemption finding the property was not in exempt use. (Dept. Ex. No. 1)

4. The applicant acquired the parcel by an executor's deed dated March 1, 1999. The property was donated to the applicant. The subject parcel is 1½ miles from the applicant's current church. (Dept. Ex. No. 1; Tr. pp. 9, 12)

5. During 1999 the applicant used the property for the following uses: on April 4, 1999, for its Easter Sunrise Service; on August 28, 1999, for a block party; and on October 31, 1999, for a fall festival-bonfire/wiener roast. The applicant has kept the property mowed. (Dept. Ex. No. 1; Applicant's Ex. Nos. 1-5; Tr. pp. 11-13)

6. The applicant was advised that it could be represented by counsel at the hearing. The applicant chose not to do so. (Tr. p. 6)

### **Conclusions of Law:**

Article IX, §6 of the Illinois Constitution of 1970, provides in part as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

This provision is not self-executing but merely authorizes the General Assembly to enact legislation that exempts property within the constitutional limitations imposed. City of Chicago v. Illinois Department of Revenue, 147 Ill.2d 484 (1992)

Pursuant to the authority granted by the Constitution, the legislature has enacted exemptions from property tax. At issue is the religious exemption found at 35 ILCS 200/15-40. That portion of the statutes exempts certain property from taxation in part as follows:

Religious purposes, orphanages or school and religious purposes. All property used exclusively for religious purposes, or used exclusively for school and religious purposes, or for orphanages and not leased or otherwise used with a view to profit, is exempt, . . .

It is well settled in Illinois that when a statute purports to grant an exemption from taxation, the tax exemption provision is to be construed strictly against the one who asserts the claim of exemption. International College of Surgeons v. Brenza, 8 Ill.2d 141 (1956) Whenever doubt arises, it is to be resolved against exemption and in favor of taxation. People ex. rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1941). Further, in ascertaining whether or not a property is statutorily tax exempt, the burden of establishing the right to the exemption is on the one who claims the exemption. MacMurray College v. Wright, 38 Ill.2d 272 (1967)

In The People v. Deutsche Gemeinde, 249 Ill. 132 (1911) the Illinois Supreme Court stated:

Unless facts are stated from which it can be seen that the use is religious or a school use in the sense in which the term is used in the constitution the application should be denied. The words used in the constitution are to be taken in their ordinary acceptation and under the rule of strict construction, which excludes all purposes not within the contemplation of the framers of that instrument. While religion, in its broadest sense, includes all forms and phases of belief in existence of superior beings capable of exercising power over the human race, yet in the common understanding and in its application to the people of this State it means the formal recognition of God as members of societies and associations. As applied to the uses of property, a religious purpose means a use of such property by a religious society or body of persons as a stated place for public worship, Sunday schools and religious instruction. *Id.* at 136-137.

The applicant used the property on three occasions in 1999. Those uses were as the location of applicant's block party, fall festival, and sunrise service. Admittedly, the sunrise service was a religious purpose, but the other two uses are not within the definition of religious purposes found in Deutsche Gemeinde. Notwithstanding that statement, three uses of a large piece of land in one year are not sufficient usage of property to be considered anything but incidental. The Illinois Supreme Court in Illinois Institute of Technology v. Skinner, 49 Ill. 2d 59 (1971) stated that it is the primary use of property, rather than any

incidental use, that determines whether a parcel will be granted a property tax exemption. The primary use of the property at issue was vacant land.

The applicant has a long-term goal to construct a new church building on the subject parcel. It intends to use the property for religious purposes in the future. In the case of People ex. rel. Pearsall v. The Catholic Bishop of Chicago, 311 Ill. 11 (1924), the Illinois Supreme Court held that the mere fact that a property was intended to be used for an exempt purpose was not sufficient to exempt said property. The Court required that the actual primary exempt use must have begun for the property to be exempt.

The property at issue is 11 and ½ acres of vacant land that is located 1½ miles from the applicant's current church. The applicant held three events on the property after its acquisition on March 1, 1999.

The applicant has kept the property mowed. No evidence was submitted that construction has begun on the subject parcel or that it was being adapted for exempt use. The property was vacant land in 1999. The Illinois Appellate Court found that a church owned building which was not used for any purpose and was boarded up during the taxable years in question did not qualify for a property tax exemption for those years. Antioch Missionary Baptist Church v. Rosewell, 119 Ill.App.3d 981 (1<sup>st</sup> Dist. 1983). In addition, the fifth District Appellate Court held that eighteen vacant lots did not qualify for a property tax exemption in Comp. Train. & Devel. v. Co. of Jackson, 261 Ill.App.3d 37 (5<sup>th</sup> Dist. 1994)

For the foregoing reasons, I recommend that Richland County parcel Index No. 06-34-150-040 remain on the tax rolls and be assessed to the applicant for 84% of the 1999-assessment year, the portion of that year that the applicant owned the property.

Respectfully Submitted,

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Barbara S. Rowe  
Administrative Law Judge  
July 26, 2001